3/8 1026

Office - Supreme Court, U.S.
FILED
JAN 25 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956
No. 711

FARR COMPANY, a corporation,

Petitioner,

vs.

JULES D. GRATIOT and AIR-MAZE CORPORATION,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on October 19, 1956.

Citations to Opinions Below.

The opinion of the Court of Appeals, printed in Appendix B hereto, *infra*, pages 15-18, is reported in 111 U. S. P. Q. 170. The opinion of the District Court is unreported and is found in the record at page 819.

Jurisdiction.

1. The judgment of the Court of Appeals for the Ninth Circuit was entered on October 19, 1956 [R. 1479]. Rehearing was denied December 4, 1956 [R. 1480].

2. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1) to review the aforesaid judgment which reversed a judgment [R. 67, 1182] of the United States District Court for the Southern District of California, Central Division, holding Petitioner's patent valid and infringed by Respondents.

Question Presented.

The single question presented in this petition is whether this Court's decision in *A. & P. Tea Co. v. Supermarket Corp.*, 340 U. S. 147, renders inapplicable Rule 52(a) of the Federal Rules of Civil Procedure on the question of invention in patent cases with the result that the Court of Appeals may reverse a judgment of validity on the ground that the patent does not amount to invention by simply ignoring the extensive and detailed findings of fact which fully satisfy the legal standard of invention prescribed by this Court.

Statutes and Rules Involved.

The statutory provisions involved are Sections 101 and 103 of the Patent Act of 1952; 35 U. S. C. §§ 101, 103 and Rule 52(a) of the Federal Rules of Civil Procedure. They are printed in Appendix A, *infra*, pp. 13-14.

Statement.

Petitioner, Farr Company, is the owner of United States Letters Patent No. 2,286,479 [R. 839], which issued on June 16, 1942, for an Air Filter Panel of the type commonly employed for removing dirt particles in air ventilating systems or in the intake systems to engines such as diesel railroad engines. Respondents are manufacturing and selling air filter panels which Petitioner has

charged infringe its patent, its complaint having been filed on May 27, 1949 under the patent laws of the United States.

Air filter panels of the type here involved operate on the impingement principle. That is, as the air passes through the filter the dust particles strike upon and adhere to collecting surfaces provided by the filter media which are oiled to cause the dust to adhere thereto. The dust is retained in the air filter panel as an accumulating dust load until the air filter panels are removed, cleaned, re-oiled and again inserted for use. Two factors of primary importance in such filters are the efficiency of the filter in removing dust from the air and the pressure drop through the filter, that is the resistance which the filter provides to the passage of air. It is, of course, desirable that the efficiency, which determines the ability of the filter to clean the air, be high. It is also desirable that the pressure drop be low, so that the filter does not unduly restrict the flow of air through the system [R. 116]. In earlier filters of this type (for example Respondents' type B which was manufactured prior to the infringing type P-5) these factors, particularly the pressure drop, change as more and more dust is accumulated in the filter, the pressure drop increasing as the dust load grows [R. 284]. Such increase in pressure drop is undesirable in that it unbalances the system which is normally constructed to deliver a certain amount of air [R. 285]. Further, the increased resistance of the filter can result in an insufficient amount of air being supplied in the particular system after the filter has been in use for a period of time [R. 284-286].

The patented filter utilizes for filter media corrugated sheets of wire screens which are set parallel to the gen-

eral direction of air flow through the filter. The corrugations (or crimps) in these sheets form valleys which provide air passages extending through the filter independently of the openings of the screen mesh. The corrugated wire screen sheets are stacked one above the other to divide the filter panel both in the horizontal and vertical dimensions into a multiplicity of small passages. Moreover, the corrugations are formed in a herringbone pattern, that is, with a sharp bend to provide an abrupt change in the direction of the corrugation and, accordingly, in the air passages through the filter formed by the valley of the corrugation [R. 110-112, 1372-1374].

The trial court found, as will be further considered herein, that this arrangement constituted a new combination of elements which for the first time provided a filter having a high efficiency and a low pressure drop which did not rise appreciably as dust collected upon the filter.

After twelve days of trial, in an oral opinion [R. 819] the trial court held each of the claims sued upon valid and infringed, and judgment was entered for Petitioner on February 26, 1952 [R. 67]. Appellants appealed from this judgment but, prior to the date set for hearing such appeal, filed a Motion to Reopen and Remand based upon purportedly newly discovered evidence. The Court of Appeals remanded the case [R. 1472] to the trial court to receive evidence relating to an earlier filter, upon which Respondents' Motion to Remand had been based. After two additional days of trial the trial court entered a new judgment [R. 1177] which provided that the new evidence presented required no modification of the original judgment except that Petitioner was entitled to additional costs. Thereafter, Respondents appealed from the new

judgment and reappealed from the original judgment [R. 1183].

This extensive trial was required by the subject involved, the factual issues presented involving matters such as paths of air flow and the collecting action of the various filter media upon the impingement of tiny particles of dust, matters which cannot be determined by mere visual observation. Consequently, the bulk of the testimony was by expert witnesses, the operation and performance of the various filters involved and the effect of structural differences between them being determined and demonstrated by the results of carefully controlled comparative tests. To this end, each of the parties introduced in evidence the results of a large number of such tests. [For example, Exs. HH [R. 1075], VV [R. 1084], 11 [R. 956], 13 [R. 956A], 29 [R. 977], 30 [R. 984], 31 [R. 985], 54B1 [R. 1455 and 54B2 R. 1456].

After fully considering the extensive technical testimony, including the numerous comparative test results introduced, the trial court held Petitioner's patent valid and infringed. In support of its decision, the court entered 34 detailed Findings of Fact [R. 59-65, 1178-1181]. Those Findings which bear directly on the issue of invention may be summarized as follows:

(a) The claims in suit are directed to a *new combination of elements* which cooperate together to provide not only advantages in the cleaning of the air but benefits in the cost of manufacture, maintenance and upkeep [Find. 9, 29, R. 61, 1179].

(b) The filter of the patent in suit has a *new mode of operation* whereby at the outset portions of the air flow through the mesh of the screen members into adjoining

passages, but as the filter panels become loaded with dust the flow of air becomes more and more confined to flow through the passages, the dust accumulating progressively along the walls of the passages formed by the corrugations, permitting turbulent flow of air through the passages and through the mesh of the screen despite increasing dust load [Find. 4, 30, R. 59, 1179].

(c) The filter of the patent in suit *achieves new and surprising results* by combining high efficiency in removing dust from the air with a low pressure drop which does not increase rapidly and by providing a filter of low manufacturing and maintenance cost as well as ease of cleaning [Find. 6, 31, R. 60, 1180].

(d) The prior art relied upon by Respondents did not contain either the elements, mode of operation, or the new and surprising results of the filter of the Farr patent in suit nor would such filter have been obvious to one skilled in the art [Find. 32, R. 1180].

(e) The patent in suit has had a wide commercial success and was responsible for the development of Petitioner's rapidly expanding business [Find. 7, R. 60].

(f) Prior to the invention of the patent in suit, the art had expended great effort and money in the scientific study and testing of different air filter panels without the air filter panel of Petitioner's patent being suggested thereby [Find. 14, R. 63].

Despite these findings, the Court of Appeals reversed the trial court, holding the patent invalid as anticipated by a prior French patent to Niestle, No. 739,956 [R. 1062], under the authority this Court's decision in *A. & P. Tea Co. v. Supermarket Corp.*, 340 U. S. 147. In its very brief opinion, the court takes no issue with any of

the above noted Findings which relate to the issue of invention. Indeed the only one mentioned is Finding of Fact 4 of which the court appears to approve. Instead, the court singles out Finding of Fact 13 [R. 62] and states simply that it does not "agree" with it. This Finding which is directed to the French Niestle patent, enumerates two structural differences between the structure of this patent and that of the patent in suit. The court not only fails to state the basis for its failure to "agree" with the finding, but recognizes such structural differences in its opinion. The first of these relates to the orientation of the filter members and, according to uncontradicted testimony renders the filter of the French patent impractical to manufacture [R. 772] as to which the trial court had found that among the advantages of the filter of the Farr patent were benefits in cost of manufacture [Find. of Fact 9, R. 61]. The Court of Appeals, without references to any testimony whatever or to this Finding states simply that the difference is "irrelevant", since "the same mechanism to collect the dust" results. The second structural difference recognized by the Court of Appeals relates to the use of filter media having impervious walls in the French patent whereas the patent in suit requires that such walls be of open mesh to permit the passage of air. As to this difference the court, without reference to any evidence whatever, merely states that it presents none of the "unusual or surprising consequences" of the *A. & P. Tea Co.* case. In this the court simply ignores the explicit findings of the trial court to the contrary [Find. of Fact 6, 31; R. 60, 1180].

Reasons for Granting the Writ.

1. The decision of the Court below construes this Court's decision in the *A. & P. Tea Co.* case so as to effect a fundamental change in the law, a change which was clearly not intended by this Court.

Petitioner is not here seeking merely a review of the factual issues concerning the validity of its patent. To the contrary, Petitioner is seeking to have resolved a fundamental question as to the proper application of this Court's recent decision in *A. & P. Tea Co. v. Supermarket Corp.*, 340 U. S. 147.

In the *A. & P. Tea Co.* case the trial court had found only that one element of a combination was "novel" and that the combination was "new and useful." This Court held that such findings did not satisfy the standard of invention which, as a matter of law, must be satisfied if a patent to a combination of old elements is to be sustained. The Court thereafter set forth the proper standard of invention in such cases.

There is no parallel in the instant case. Here the trial court made detailed and explicit findings of fact which fully meet the legal standard of invention enunciated by this Court in the *A. & P. Tea Co.* case. Thus, the trial court found that the patent in suit describes and claims combination of elements [described in Find. of Fact 3] which is a *new* combination [Find. of Fact 9 and 29; R. 61 and 1179]. The mode of operation of this combination [described in Find. of Fact 4 and 30; R. 59, 1179], is *new* [Find. of Fact 10, 11, 12, 13, 30 and 32; R. 61-63, 1179 and 1180]. The results achieved [described in Find. of Fact 6 and 31; R. 60 and 1180] are *new* and *surprising* [Find. of Fact 31 and 32; R. 1180].

The filter was not obvious to one skilled in the art [Find. of Fact 32; R. 1180].

Without regard to these various findings nor to any testimony in the record, the Court of Appeals simply selected one prior art patent (Niestle No. 739,956), noted two structural differences between such patent and the patent in suit, and concluded that one of these differences was "irrelevant" and that the other did not create patentable novelty under the *A. & P. Tea Co.* case.

The import of this decision is simply that the Court of Appeals has interpreted the *A. & P. Tea Co.* case as rendering inapplicable Rule 52(a) of the Federal Rules of Civil Procedure to the question of invention in patent cases. The findings of the trial court fully satisfy every factual requirement prescribed by this Court as necessary to meet the legal standard of invention. The appellate Court did not set such findings aside as clearly erroneous, to the contrary, it simply ignored them, relying solely upon the *A. & P. Tea Co.* case as authority for this approach.

Such a construction of the *A. & P. Tea Co.* case establishes a fundamental change as to the scope of appellate review in patent cases. Not only is such change contrary to the prior law as unequivocally established by this Court in *Graver Tank & Mfg. Co. v. Linde Air Prod. Co.* (1948), 336 V. S. 271, 274, but is wholly unsupported by the *A. & P. Tea Co.* case.

2. The question of the effect to be accorded to findings of fact on the issue of invention in patent cases is of paramount importance to the patent bar and to the Federal Courts which appear to be in hopeless conflict and confusion. Thus, among the most recent decisions of

the Courts of Appeal, some[1] have taken the position that the question of invention in its entirety is one of law and that findings are at most merely persuasive on the question. Other Courts,[2] while recognizing that the standard of invention to be applied is a matter of law, attach to the supporting findings of fact the full import of Rule 52(a) of the Federal Rules of Civil Procedure.

The confusion appears to have arisen from the differences in the majority and concurring opinions of this Court in *A. & P. Tea Co. v. Supermarket,* 340 U. S. 197. In the majority opinion Mr. Justice Jackson carefully points out that no findings are being set aside, that the findings below were inadequate to sustain the invention and that the basis of the decision was the failure of the lower Courts to apply the proper standard of invention. The concurring opinion of Mr. Justice Douglas, however, makes no reference to the findings of fact below but to the contrary states simply, "the question of validity of a patent is a question of law" 340 U. S. at 155. No later decision by this Court deals with the matter since despite numerous petitions for certiorari which have been filed, this Court has not reviewed a case involving the validity of a patent since its decision in the *A. & P. Tea Co.* case in 1950.

It is Petitioner's contention that those courts are in error which have construed the *A. & P Tea Co.* case as emasculating Rule 52(a) on the question of validity in

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[1]*Blish, Mize and Silliman Hardware Company v. Time Saver Tools* (C. A. 10 1956), 236 F. 2d 913; *Glitsch & Sons v. Wyatt Metal* (C. A. 5, 1955), 224 F. 2d 331.

[2]*Helms Products v. Lake Shore Mfg. Co.* (C. A. 7 1955), 227 F. 2d 677; *Steffan & Weber Heating and Sheet Metal Company* (C. A. 8 1956), 237 F. 2d 601.

patent cases. Such construction is wholly unsupported by the majority opinion, moreover, as recognized by this court in *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U. S. 271, 274, in patent cases more than any other Rule 52(a) must be vigorously applied if the proper result is to be reached by the courts. Thus, the difficulty of presenting the highly technical factual issues to the trial court in patent cases is well recognized and, as in the instant case, frequently necessitates protracted and expensive trials involving extensive expert testimony coupled with actual demonstrations of the operation and characteristics of the devices involved. The nature of the appellate proceeding precludes more than the most cursory explanation of the frequently complex technical aspects of the several defenses with which a patentee is normally confronted. Consequently, the findings of the trial court should weigh most heavily and Rule 52(a) of the Federal Rules of Civil Procedure should be most scrupulously followed.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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